IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS

IN RE	)	
CURTIS ALLEN WHEELER,	)	**Case No. 99-11843**
	)	**Chapter 13**
Debtor.	)	
	)	
CURTIS ALLEN WHEELER,	)	
	)	
Plaintiff,	)	
	)	
v	)	**Adversary No. 99-5299**
	)	
UNITED STATES OF AMERICA DEPARTMENT OF HEALTH & HUMAN SERVICES, and SALLIE MAE) SERVICING CORP., and TEXAS GUARANTEED STUDENT LOAN PROGRAM,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION ON (1) DEBTOR'S OBJECTIONS TO CLAIMS; (2) DEBTOR'S COMPLAINT TO DETERMINE DISCHARGEABILITY; AND (3) CREDITORS' OBJECTION TO CONFIRMATION.

Debtor Curtis Allen Wheeler financed his chiropractic education with various student loans which have been consolidated into and form the basis of two claims in his Chapter 13 case. Debtor makes no assertion that he is unable to repay the loans without suffering undue hardship; rather he seeks this Court's determination that the interest accruing post-petition on his loans is subject to the Chapter 13 discharge. As a predicate to taking this position, debtor has objected to the allowance of both of the claims to the extent either seeks post-petition interest. Both creditors

concerned have objected to debtor's plan and responded to his objections to their claims. The parties have submitted this matter on stipulated facts and briefs which the Court has carefully reviewed.

First, debtor objects to the claim of Texas Guaranteed Student Loan Program (TGSLP) as well as that of the Department of Health and Human Services (HHS) for post-petition interest . Second, debtor has filed an adversary complaint against TGSLP and HHS to determine the dischargeability of post-petition interest on the loan claims. Third, both TGSLP and HHS timely filed their objections to confirmation of Debtor's First Amended Chapter 13 Plan.

Debtor appears by Mary Patricia Hesse of Redmond & Nazar, L.L.P. TGSLP appears by Bruce Swenson. HHS appears by Connie Calvert, Assistant United States Attorney for the District of Kansas.

FINDINGS OF FACT

After reviewing the stipulations of the parties, the Court makes the following findings of fact. These findings of fact apply to the disposition of debtor's objection to the claims of TGSLP and HHS, to the determination of the adversary proceeding, and to the confirmation of debtor's Chapter 13 plan.

In February of 1988, the debtor applied for and obtained a so-called "SMART loan" which consolidated four prior loans from the predecessor of Sallie Mae Servicing Corporation ("Sallie Mae"), and on April 12, 1988, Sallie Mae disbursed $27,716. TGSLP guaranteed repayment of this loan. On August 16, 1999, TGSLP paid the SMART loan and obtained an assignment of the debtor's obligations. TGSLP claims $26,110.09, representing the unpaid principal balance plus interest accrued to August 9, 1999. The debt accrues interest thereafter at the rate of $6.44 per diem or 9.00 per cent per annum until paid.

In addition to these loans, debtor obtained approximately six HEAL loans between 1983 and 1985. These loans were also subsequently assigned to HHS. As of the date of filing, May 21, 1999, debtor owed $59,447.13 in connection with the HEAL loans. HHS claims $60,658.00 plus interest accrued to August 16, 1999 of $1,210.38 and interest accruing thereafter at $14.08 per diem or 8.375 per cent per annum until paid. Debtor filed this case on October 7, 1999. Debtor's plan, as amended, provides for the full payment of HHS' and TGSLP's allowed claims (which do not include the interest accruing on the claims post-petition) and the discharge of any post-petition accrued interest once the debtor has completed his plan.

DISCUSSION

We first consider whether the TGSLP and HHS (referred to cumulatively as the "Loan Creditors") should be allowed post-petition interest on their claims as filed herein. Sallie Mae filed claim number 2 for $59,528.03 (now assigned to HHS) and number 5 for $25,614.56 (now assigned to TGSLP). Debtor objected to the allowance of both claims, asserting that the creditors had failed to document adequately the amounts alleged to be due and that, to the extent either or both claims sought payment of post-petition interest, the same should be "disallowed or discharged" (Debtor's Objection, September 9, 1999, ¶2). When the objection was set for hearing by agreement of the parties, the objection was docketed alongside the adversary proceeding.[1] While the March 2, 2000 stipulations are unclear as to whether they were intended to cover both matters, we find that they supply sufficient record upon which to resolve not only the adversary proceeding, but also the claims objection.

[1]At a hearing on January 6, 2000, the parties advised the Hon. John K. Pearson, Bankruptcy Judge, that no facts were at issue and that the matter would be submitted on stipulation. Courtroom Minute Sheet, pleading no. 48.

The stipulations adequately resolve that part of the objection relating to the amounts claimed by the creditors. The parties stipulate and the Court FINDS that as to Claim Number 2, HHS's claim should be allowed in the amount of $59,447.13. The Court further FINDS that as to Claim Number 5, TGSLP's claim should be allowed the amount of $26,110.09.[2] 11 U.S.C. § 502(b)(2) expressly forbids the allowance of any post-petition or unmatured interest, and, to that extent, debtor's objections to claims number 2 and 5 are sustained**.**

We next consider whether those portions of the student loan debts which are attributable to post-petition interest, penalty or cost of collection are dischargeable. In his adversary proceeding, debtor seeks a determination that any post-petition interest, penalty, or collection expense incurred or asserted by TGSLP and HHS is dischargeable. Debtor stipulates that the loans themselves (which presumably include pre-petition interest, penalty and charges) are excepted from discharge by 11 U.S.C. § 523(a)(8). This section excepts from discharge any *debt* "....for [a] loan made, insured, or guaranteed by a government unit....unless excepting such debt...will impose an undue hardship...." 11 U.S.C. § 523(a)(8).

Debtor relies on the provision of 11 U.S.C. § 502(b)(2) which provides that the Court shall allow a *claim* except to the extent that the claim is for unmatured interest. Debtor asserts that because the Chapter 13 "super" discharge discharges all debts provided for by the plan or disallowed under 11 U.S.C.§ 502 , post-petition interest on the loans should be disallowed and therefore discharged. Debtor relies on In re Wasson, 152 B.R.639 (Bankr. D. N. M.1993).

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[2]The Court notes that nothing contained in the record enables it to calculate with any accuracy the extent of interest accrued on the TGSLP obligation after the date of filing. As the parties have stipulated to the amount set out in the text, the Court so allows the claim.

Wasson held that, because 11 U.S.C.§ 523(a)(8) does not mention unmatured interest and § 502 does, the latter statute is more specific than the former and, as such, governs over a more general statutory rule. Id. at 641; See also Green v Bock Laundry Machine Co., 490 U.S. 504, 524, 109 S. Ct.1981, 1992, 104 L. Ed. 2d 557 (1989) . Wasson also held that the United States Supreme Court's decision in Bruning v United States, 376 U.S. 358, 84 S. Ct. 906, 11 L. Ed. 2d 772 (1964), holding that interest on a nondischargeable debt under §17 of Bankruptcy Act of 1898 is also not dischargeable, did not survive the Code's enactment. Id. This is a distinctly minority view.

Debtor also argues that because his plan contemplates full payment of the creditors' *allowed claims*, the disallowed portions of the claims (i.e., the post-petition interest) should therefore be discharged. Parroting the Wasson opinion, debtor distinguishes his situation from the fact pattern in Bruning in which that debtor apparently did not pay the allowed claim in full.

The Loan Creditors argue that Bruning remains good law. They embrace the Tenth Circuit's decision in Fullmer v. United States (In re Fullmer), 962 F. 2d 1463 (10th Cir. 1992), which follows Bruning and applies its rule in a Chapter 11 case arising under the Bankruptcy Code concerning tax claims. The Loan Creditors cite the decisions of four other circuits which have affirmed the continued vitality of Bruning's rule: Leeper v. Pennsylvania Higher Educ. Assistance Agency (In re Leeper), 49 F.3d 98, 102 (3rd Cir. 1995); Burns v United States (In Re Burns), 887 F.2d 1541 (11th Cir. 1989); Hanna v. United States (In re Hanna), 872 F.2d 829 (8th Cir. 1989); Bradley v United States, 936 F.2d 707 (2nd Cir. 1991).

The Loan Creditors also point out that Bruning did not consider the "paid-in-full" argument raised by the Debtor. They assert that both § 502 and § 523 underline that post-petition interest is disallowed against the estate by § 502, but that the debtor himself will remain liable for any portion of the debt which is not discharged. The Loan Creditors cite as support for this position

the Third Circuit's Leeper decision, and the Ninth Circuit Bankruptcy Appellate Panel's decision in In Re Pardee, 218 B.R. 916 (9th Cir. B.A.P.1998), aff'd 193 F.3d 1083 (9th Cir. 1999).

The Loan Creditors have the better view. First, reading the three relevant statutes together, the Court is compelled to find that Congress intended to except student loan interest from even the Chapter 13 super discharge. The language of § 1328 (a)(2) which includes student loans among those debts excepted from discharge is plain and indicates an intention to render all the attributes of a student loan nondischargeable. Section 1328 plainly excepts student loans from the class of debts "provided for by the plan or disallowed under §502...." "Debt" is defined as " liability on a claim," 11 U.S.C. §101(12) and a "claim" is "... [a] right to payment, whether or not such right is matured or unmatured." 11 U.S.C.§ 101(5)(A). This plain language suggests that a "debt" includes unmatured interest and further that unmatured interest is part of what is excepted from discharge in § 523(a)(8) and, therefore, § 1328(a)(2). Both the Leeper and Pardee courts employ the same or similar analysis on roughly the same facts.

In Leeper, the Third Circuit considered a very similar case to this one. The debtors owed the Pennsylvania Higher Education Assistance Agency student loans and sought in an adversary proceeding to determine that the post-petition accrued interest was dischargeable.
The court there held that the Bruning rule was specifically applicable and that interest on a nondischargeable debt is "an integral part of a continuing debt." 49 F.3d at 102. Nothing in the Code suggests that, *for dischargeability purposes*, interest on a nondischargeable debt should be treated differently from the debt itself. Leeper was the first Circuit to apply Bruning to a Chapter 13 case and the court expressly distinguished between what portion of a claim is "allowed" against the estate and what portion of the claim is discharged. Id. at 101. Noting that the Wasson decision cited above was then the only decision holding otherwise and that two other Bankruptcy

Courts had expressly disapproved of its rationale, In re Shelbayah,165 B.R. 332, 337 (Bankr. N. D. Ga. 1994), and Branch v. UNIPAC/NEBHELP (Matter of Branch),175 B.R. 732 (Bankr. D. Neb. 1994), the Third Circuit found that the interest accrued post-petition was not dischargeable. Id. at 102. In 1998, Pardee cited Leeper with approval and noted that Wasson remained the only reported case holding student loan interest dischargeable. We note that no other Courts appear to have embraced Wasson. We also decline to do so.

Our reliance on Leeper and Pardee is justified by this Circuit's holding that the Bruning rule applies to Bankruptcy Code cases. In In re Fullmer, 962 F.2d at 1468, the Tenth Circuit held post-petition accrued interest on a nondischargeable pre-petition tax debt survives bankruptcy as a personal liability of the debtor. We agree with that conclusion and are particularly persuaded by the articulate explanation of Bruning found in the Ninth Circuit BAP's opinion in In re Pardee, which states:

> "Unless Congress expressly manifests its intent to change well-established judicial interpretation of the bankruptcy laws as they existed prior to enactment of the Bankruptcy Code in 1978, we must presume that pre-Code interpretations of the Act have survived the enactment. [citations omitted].

218 B.R. at 920. Bruning remains good law.

Lastly, Bruning did not address the "paid-in-full" distinction raised by debtor. Whether the allowed portion of the student loan debt is paid in full or not, any post-petition interest on an "allowed claim" is precluded. As the Pardee Court points out, Congress has employed the "allowed claim" terminology in various code sections (e.g., § 726 and § 1129(b)(2)). Congress' omission of this term in § 1328(a)(2) suggests its intention to carve certain "debts" out of the super discharge. Id. at 922. As noted above, "debts" and "claims" are clearly distinguishable.

On its face, debtor's plan does not purport to pay the Loan Creditors' *debts* in full; the plan

only provides for the payment of their *allowed claims*. Debtor's full compliance with the plan's provisions will not pay the debt in full and as it is nondischargeable, interest on the debt will accrue and be collectable from debtor.[3] The Court concludes that the post-petition accrued interest, penalties and or charges incurred on the TGSLP and HHS loans are excepted from any discharge to be entered by this Court under 11 U.S.C. § 1328(a)(2) or other applicable sections.

With regard to the confirmation of debtor's plan, the Court sustains the objection of the TGSLP and HHS and debtor is granted ten (10) days for the date of the entry of this Order in which to file an amended plan which omits reference to the purported discharge of student loan interest; to convert this case to proceedings under Chapter 7; or to dismiss the case.

The foregoing constitute Findings of Fact and Conclusions of Law under Rule 7052 of the Federal Rules of Bankruptcy Procedure and Rule 52(a) of the Federal Rules of Civil Procedure. The Judgment on Decision based on this ruling will be entered on a separate document as required by Fed. R. Bank. P. 9021 and Fed. R. Civ. P. 58.

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[3]The Court notes that in early 2000, the debtor's Chapter 13 plan was conditionally confirmed subject to the determination of the matters at bar and, accordingly, this debtor will not be eligible for discharge until at least 2003.

Dated at Wichita, Kansas this 10th day of July, 2000.

ROBERT E. NUGENT
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the **Memorandum Opinion** was deposited in the United States mail, postage prepaid on this 10th day of July, 2000, to the following:

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